EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE LOESTRIN 24 FE ANTITRUST LITIGATION	:	13-MD-02472(WES)
	:	
	:	United States Courthouse
	:	Providence, Rhode Island
	:	
	:	Thursday, August 27, 2020

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
BEFORE THE HONORABLE WILLIAM E. SMITH
UNITED STATES DISTRICT COURT JUDGE

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(VIA ZOOM VIDEO CONFERENCE)

27 AUGUST 2020

THE COURT: Good morning, everyone. We're here in the matter of In re Loestrin 24 FE antitrust litigation, and we're here for the final hearing on the approval of the class-action settlement for all plaintiffs; the direct purchasers, the end-payors, and the third-party purchasers. So let's have counsel identify themselves for the record. I'd suggest that maybe those of you who are going to be primary spokespersons for your parties just introduce yourselves as well as your colleagues for whom you want to enter appearances.

MR. SOBOL: Good morning, your Honor. Perhaps I'll start first.

THE COURT: Sure.

MR. SOBOL: Good morning, your Honor. Tom Sobol, Hagens Berman Sobol Shapiro, for the direct purchasers. I will be doing the speaking for our group. I note from the participants' list that I see for the direct purchasers we also have David Cavello, David Sorensen, Ellen Noteware, Jessica MacAuley, Joe Meltzer, Kristen Johnson, Peter Kohn -- I believe that's it, your Honor.

THE COURT: Okay. Thank you.

MR. BUCHMAN: Good morning, your Honor. Michael M. Buchman for the end-payor and third-party payor plaintiffs. And with me this morning are Marvin Miller and Steve Shadowen and Sharon Robertson, who are all court-appointed co-lead counsel, as well as Bob McConnell from our Providence office who is liaison counsel on behalf of the end-payor plaintiffs. Thank you, your Honor.

THE COURT: Okay. Thank you.

MR. PACE: Good morning, your Honor. Jack Pace here from White & Case on behalf the Warner and Watson defendants. And I'm joined here today by Mark Gidley, also of White & Case, and Nicole Benjamin from Adler, Pollack & Sheehan.

THE COURT: Okay. Thank you. Anyone else? Okay. Very good.

So I've read your papers, and I've reviewed the proposed orders that have been submitted, and you've revised those -- some of those have been revised -- in response to some requests that we made of you. I think I'll turn it over beginning with the direct purchasers plaintiffs and then the other plaintiffs, make your presentation, and then I'll hear anything that the defendants wish to say about it.

So Mr. Sobol, we can start with you.

MR. SOBOL: Well, first, thank you very much, your Honor. I very much appreciate the opportunity to be before you again. I do wish it was in person. I did enjoy the times that we got a chance to be there, even though I didn't always like what you were doing to us but, nevertheless, I appreciate very much the opportunity to be back before you.

And without trying in any way to curry favor in any way, your Honor, I think it's very important to say for, frankly, all counsel -- and I'm not trying to grandstand -- this Court spend an enormous amount of time, you and your staff, the law clerks, the court personnel, spent a huge amount of time on this matter. There were jurors that spent -- took times out of their lives in the few precious weeks before the COVID crisis began. And we really do very much appreciate that very, very much. I think that's just important to say at the outset. I will not be long, but I do think that it's important for me to create a record on the relative points, even though you do have all the materials that are necessary before you, to state the following in connection with our motion.

First, there are four things we're really asking you to do here. We're asking you to find that the settlement notice was constitutional and adequate.

That the settlement of the direct purchaser case was fair and reasonable. That the proposed allocation plan is fair and reasonable. And to adopt the magistrate judge's proposal, report and recommendation, which itself dealt with three things; the class fee, the class expenses and the award to Ahold as a class representative.

On the first of those, I think that the papers will speak for themselves. We have a class that we actually know the names of the entities. They were sent notice by first-class mail. They also got emails. To the extent that it wasn't a hit in either of those regards, the class administrator followed up. I don't think that's in any way controversial.

Turning to the second issue, your Honor, which is the fairness of the proposed settlement, whether one's looking at the *Grinnell* factors or looking at the factors under Rule 23(e), my approach on these things is to categorize the considerations into two buckets; what are the procedural considerations and what are the substantive considerations.

Here, the procedural considerations warrant a conclusion of fairness. Procedural, obviously, warrants an inference of fairness of certain kinds of processes. That's why I put it in the terms of the

procedural consideration.

Here, the settlement was achieved after all discovery on the eve of trial so that people know that procedurally all of the issues have been vetted. The plaintiffs' lawyers and the defendants' lawyers were competent. I won't say anything more about that. We did have an experienced mediator that was involved in the process.

The Court itself was deeply knowledgeable about the issues; not just because it presided on it, obviously, but because you had dug into issues twice on 12(b)(6)es in class certification on two different groups, summary judgment hearings, *Daubert* hearings, motions in limine, so that procedurally is adequate. The First Circuit had also reviewed the case a couple of times, at least for our case; first, on a 12(b)(6) and also on our class certification.

Now, I'm mindful, because I've read one of your decisions, that you sort of look at these tests, you run through a list, these laundry lists tend to be sort of self-serving, right? So if you just pick the ones that are, you know, supporting your position or whatever, it's sort of defining the result. So I did a mental exercise in preparing for this, which is, okay, can I honestly define a procedural aspect here which

might not support or might even cut away from a conclusion that the settlement is fair and reasonable? And I honestly couldn't think of a procedural -- I'll turn to the substantive in a moment -- but I couldn't think of a procedural circumstance here that might give the Court cause, at least for the direct purchaser side, because you also know that all of the direct purchasers got actual notice because we know exactly who they are -- they're all sophisticated because they are in the business of buying and selling drugs -- and therefore -- and none of them objected. So I couldn't identify any procedural issue which would cut against the issue of the conclusion of fairness.

So then turning to the issue of substantive fairness and reasonableness of the settlement. A couple of obvious points that are in our papers, but then I'll turn to the more interesting mental exercise. Factually and legally, this case was highly complex; even for a reverse-payment case, this was highly complex. You know, our best, if you will, reverse-payment cases are the simpler you can possibly get it. But for reasons that were needed in this case, this was a complicated reverse-payment case and generic-delay case. We had a fraud on the market theory. We had a sham-litigation theory. The tests

under both of those theories is obviously very difficult given the Noerr-Pennington requirements of overcoming that.

The reverse-payment case here was not just one kind of a reverse payment; it was a hybrid, if you will, no AG, other side deals, each one of them with its own additional level of complexity and needed to bring in certain kinds of experts.

And then the issues of causation become even all the more complicated because you've got these three or four different kinds of liability theories that having to show what difference that made and, obviously, depending upon what you show by way of liability, that's going to change the way that you have to construct what the circumstances would have been in a competitive situation. So that was complicated. And the damages that are also complicated, because the damages have to have these multiple, different scenarios depending upon the way that the liability all cuts out, so it was a very complicated case.

We had some risks on market power. You know that issue more than probably any other issue because you waffled on it, your Honor, frankly. No disrespect intended but, frankly, I think that's the -- it goes to show how deep the Court was thinking about those

issues, frankly.

THE COURT: I don't know if I would use the term "waffled," but my view did shift, I will say.

MR. SOBOL: Fair enough. Fair enough. Well, I didn't use "flip-flop," your Honor, that was another option I could have done, but in any event.

What I will say about market power, your Honor, is that I do believe legally that in these cases the plaintiff should get summary judgment. I just think that the brand-generic marketplace is a situation where we should get summary judgment. But I also recognize -- and I told this to the lawyers at White & Case -- that if we end up in front of a jury, this is the kind of jury that you can unfortunately try -- this is the kind of situation or issue in front of the jury where you really can potentially confuse them out of something that they ought not be confused about. So it is a real risk that we had, even though I candidly, as a litigant -- as an adversary in these cases -- don't think it should be a fair one.

And one way of looking at this case also in terms of just the dollars so the class -- the gross settlement amount of $120 million, as our papers indicate, depending on how you look at our single damages, is in a range of about 18 percent to about 80

percent of the single damages. And according to the case law that we've been able to see, cited in footnote 85 of our brief, that's in the range of what you see is reasonable antitrust results.

So there are two I think -- I did the same mental exercise and said, okay, Sobol, you had an interesting laundry list there, but what are the things that cut against the substantive question of fairness and reasonableness? And I came up with two. The first one is disclosed in our papers.

The defendants have more money than this to pay a judgment. They're not the deepest pocket, but they are a deep pocket and we did not confront the immediate risks of inability to pay. But as our papers also showed, that really is just a neutral factor in cases like this when you have a deep pocket. But that was one thing that cuts against a conclusion of reasonableness. I don't think it gets us anywhere here.

The other one is I think just more like an intellectual observation than anything else, but it is the case that antitrust cases tend to settle for less than single damages. But antitrust cases, at least from the direct purchasers side, have a federal statute that has a mandatory treble damage award. And there's

a conundrum observed in the academic paper that we cited at page 85 of our memo that, basically, one scratches one's head which is why the cases settle for less when you've got a treble damage award that's out there. So I think that's an observation that might cut against the question of reasonableness.

I do think, though, obviously, in the end -- and I don't think this is terribly controversial, but I do think that, again, we have to make this record to you -- that a $120 million settlement, when you compare this to all the other generic suppression cases, it's not the largest one, but it's on the larger side of the other settlements, and I think what ultimately drives it is the reality that these cases are really quite complex. And having tried one of them, I know that they're also quite difficult to try because the jury is being asked to absorb a huge amount of different kinds of information, whether it's the details of the patent merits or how the industry works with, you know, generic entry into the market, causation issues about the ability to get to market, manufacturing.

There are just so many different kinds of issues. Medical issues about, you know, the type of product and how that product competes against others. You sort of just swim at some point with the

complexity. And I think that that's one of the reasons why this is a very good settlement because this case was much more complex than the others and yet we're settling at a level that's higher than most of the other cases. So that's what I'll address on the issue of the fairness and the reasonableness of it.

I'll turn now to the plan of allocation which really -- again, I don't think this is terribly controversial, but just so you know, the plan of allocation for the direct purchasers will be straightforward but evolved. We made sure that we get apples-to-apples data from each of the class representatives. We don't just look at unit sales; we actually look at purchases. We draw distinctions between brand and generic purchases in order to make sure that differently affected members of the class are treated reasonably, which they are here.

Typically, in these cases, it does not end up being controversial, but it is involved. Sometimes there are issues of making sure we're talking about apples to apples when we have to address issues, for instance, like returns and how accounting is kept with with respect to that. But at bottom, it's a very straightforward process made easy by the fact, again, that we know who they are and they are in a position to

be able to provide us with correct data.

So putting that aside then, turn to the issue of seeking to have the Court adopt Magistrate Judge Sullivan's report and recommendation. The expenses in this case are quite similar to expenses that we've seen in other cases. The expense request of about $3.9 million, about two-thirds of that is experts, maybe even somewhat more than that, two-thirds is just experts. Again, that's consistent with what we've seen in other cases. The documentation is there.

Let me then turn to the Ahold request for a hundred-thousand dollars. I do think it's important for class representation in this case, I think it is important that we observe that Ahold, a large company, not only stuck with the case, but it stuck with the case even though there were other class representatives who, for good reasons, needed to not stick with the case till the end. Ahold did. It served the class well and therefore should be able to receive a hundred-thousand dollars for that effort. It did put in time and energy -- not money, but time and energy into its class-representative duties.

And the final issue with respect to attorneys' fees, several things. The report and recommendation follows the memo that we provided and so I don't need

to go into all of those issues. What I do want to focus in on is, for these purposes, the conundrum, if you will, that you've observed in some of your other cases which is why look at a laundry list? Shouldn't there be a more rigorous way approach looking at a fee request in these circumstance, and is there a more market-driven approach way to be able to look at these cases?

And I think that there's some real merit to those kinds of observations, frankly. I think when you apply that kind of market-driven rigor to what you see in the materials we filed before you is that, in this market, with a class counsel who we have effectively our own R&D departments because we have to actually research and develop the cases in order to get them filed and we take on the vast vault of the work that ends up being done in direct purchaser cases, even if there are other groups like the retailers that come along and don't have R&D departments, that when you look at what the jurists have done in looking at these cases, even though after the fact, as a practical matter, the uniformity -- because we did not cherry-pick results when we provided these charts to you, right -- again, that was another teaching that you had from one of your cases, don't give me a chart of

the cases that just support your position, give me the chart that's like actually empirical analysis of what's happened elsewhere.

That empirical analysis shows that, you know, it's a third. When it's not a third, it's such a clear outlier like *Paxil* where the lodestar is less than a million, the result's a hundred-million dollars, what do you do in that situation? It's just an absolute outlier, Other outliers like that, *Provigil*, the total being 512 or something million in that order, something like that. It's not a clear outlier, this market for this little cottage industry for class counsel is a third.

So with that, unless the Court has any questions, I think those are the highlights that I wanted to provide to you on the papers.

THE COURT: No, I don't really have any questions. I'm not aware of any court -- maybe you can tell me if there is -- any court that's attempted to apply a more market-based approach to the fees along the lines of what I've done or tried to do a bunch of years ago in that security case. Has anyone tried to do that in one of these cases?

MR. SOBOL: No, no one has tried to do that in these cases. Candidly, it's more like the grocery-list

approach and then a look at what's happened in other cases. You know, there is again -- I mean, I'm going to take the bait on this, your Honor, because I actually do think about these issues and I probably shouldn't take the bait, but let me just say, right, my little hint about an R&D department, right, is that I'm aware that there's also some direct purchaser lawyers out there who get hired to represent opt-outs, right. And it would be an intriguing, but difficult to undertake, empirical inquiry into what the rates are being charged there, what the class lawyers end up charging. How much time and energy is being put in on each side and, therefore, whether or not the opt-out counsel effectively have a market-driven rate that's actually higher than the class lawyers.

THE COURT: Right.

MR. SOBOL: That would be -- if one wanted to do it, that's how you would have to go about doing it. But, of course, you'd have to figure out some way to get behind the private confidential agreements that the opt-out counsel have, right.

But in reading your decision, I'm very intrigued by, frankly, the market-driven approach. I've been involved in a lot of these battles from tobacco and on where that was a big part of the question. Same issue

is going to be involved in opioids, that kind of thing.

So I think empirically that's what you have to do, but I don't know how you go about doing it. So there we go; I took the bait. Probably shouldn't have.

THE COURT: It's very hard to it did post hoc, that's for sure.

MR. SOBOL: Yes.

THE COURT: Okay. No, I really don't have any further questions. I think you've made a comprehensive presentation both on paper and in what you've just presented. So I'll leave it there, and we can turn it over to, I guess, the EPPs.

MR. BUCHMAN: Good morning, your Honor. Michael Buchman for the end-payor and third-party payor plaintiffs. I would echo the gratitude that Mr. Sobol conveyed. We are very thankful and appreciative for all the efforts of the Court over the past seven years and three months in connection with this litigation. And we hope that your Honor's family and you are healthy and safe, as well as the Court staff and Magistrate Judge Sullivan. We hope all is well.

Having said that, we are here today on plaintiffs' motion for final approval of the notice settlement, plan of allocation, and we are also requesting in connection with this motion that the

Court affirm and adopt Magistrate Judge Sullivan's report and recommendation on plaintiffs' motion for attorneys' fees, costs, expenses and service awards to the class representative.

Plaintiffs -- Mr. Sobol didn't go into a detailed history of the litigation. I don't feel it's necessary because we, as end payors, had a joint declaration in connection with our motion for approval of attorneys' fees outlining the detailed history of litigation, and Magistrate Judge Sullivan, in her report and recommendation, also had a very extensive history of the litigation, so we won't go over ground that's been covered.

But we do want to briefly mention that there are a few distinctions with regard to our case, and we would adopt what Mr. Sobol has said in connection with the issues on final approval wholeheartedly, but we do have a couple of distinctions to make. The first being, your Honor, that the Lupin settlement -- the direct purchasers did not sue Lupin. The Lupin settlement that we achieved was in conjunction with discussions that we had with Lupin's counsel, along with the retailer plaintiffs. That settlement for a million dollars was achieved during the class-certification phase of the proceeding. And that

settlement was negotiated over an extensive period of time at arm's length with counsel for Lupin and the retailers at a time where it was a highly controversial case and we were litigating our claims aggressively.

The other point to make is that the directs and the retailers settled their claims with regard to Warner Chilcott earlier than the end-payor plaintiffs and the third-party payor plaintiffs. Our case against Warner Chilcott, as the Court may be aware, settled the morning of January 3rd, that Friday of our last pretrial conference. That settlement was achieved with the assistance of two mediators, Layne Phillips and David Murphy, both of ADR Resolution. That settlement was achieved in the morning of the final pretrial conference, the last business day before trial. And after the case settled, the Court requested that we retire and paper a memorandum of understanding, which we did, and we returned to the Court that afternoon with the memorandum of understanding outlining the terms of the settlement. So those are slight distinctions between our case and the direct purchaser case.

I would like to note, your Honor, that there is an issue on final approval that the Court might consider as a factor, that being how this settlement

has been received by the class members. This settlement has received no objections, that we are aware of. There was one request for an opt-out, Health Care Services Corporation which, your Honor may recall, requested to opt out and then decided they didn't want to opt out; they actually wanted to participate in the class, in the settlement. And your Honor recently approved them coming back into the class earlier this week. So we believe that that is an important factor for the Court to consider in connection with final approval, that being how well received the settlement was by class members.

Under Rule 23, the Court may approve a proposed settlement if it's fair, reasonable and adequate. The ultimate decision by the Court involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible, but perhaps unattainable, variations on the proposed settlement. And district courts have wide discretion whether to approve a proposed settlement, especially if the parties have negotiated at arm's length, conducted sufficient discovery, the Court may presume or must presume that the settlement is fair, reasonable and adequate. And that's the case here.

District courts have weighed numbers of other

factors, including the reaction of the class to the settlement, the complexity, expense and duration of a trial, the risks in establishing liability and damages and maintaining a class action through trial and the range of reasonableness of the settlement in light of the best possible recovery and the attendant risks of litigation. So first let me address whether the parties engaged in arm's-length, good-faith negotiation.

I just mentioned with regard to the Lupin settlement for a million dollars that that was conducted during litigation with Lupin's counsel at arm's length. That was not achieved with the assistance of a mediator, unlike the third-party payor settlement which was achieved with the assistance of a mediator, and that was reached the last business day before trial which afforded class counsel at that time a full opportunity to weigh the risks and rewards of proceeding to trial against Warner Chilcott.

So I can't imagine a better situation than having a full record where there were millions of pages of documents produced to plaintiffs, there were a hundred depositions, there were 51 motions in limine. This discovery was extensive in this case, and it was hotly contested on market-power issues.

At the time that the Warner Chilcott settlement was reached, we were well apprised of all the risks and rewards of proceeding. And with regard to the Lupin settlement in 2019, we were similarly well versed in the risks and rewards of proceeding as to Lupin.

Another factor that courts consider is the risk, expense and duration of continued litigation. You know, Mr. Sobol has just outlined the risks that were involved in this litigation as to liability. This was a highly complex case involving issues at the intersection of antitrust, patent, antitrust economics, pharmaceutical regulation and causation issues, specifically in this case. Plus, with regard to our specific case, we had state laws of approximately 26 or more states that added additional complexity to the case.

Now, with regard to damages, our case was even more complex than the directs in terms of establishing damages because it would have been a second damages phase of the trial which would have required us, at considerable expense, to go out and subpoena the PBMs, get data produced from them and to work on that data to establish damages in connection with the case. So we believe that the risks associated and the expense associated with proceeding with this case were great.

Again, the other point to make, has the settlement been well received, I've covered that. The issue here is whether or not there have been any objections. We're not aware of any. There was one opt-out; they wished to come back into the case and they now have. We believe that's a favorable factor highly supporting approval of the case.

The other aspect that the Court can consider is the experience of class counsel and whether class counsel supports this case. Now, co-lead counsel in this case for the end payors have two decades of experience litigating these cases. We have been doing these cases well before the *Actavis* decision came down, and we've had success and we've had losses. We've had losses in cases like *Cipro* and *Tamoxifen*.

We are very well versed in these types of cases and the issues and what we believe is a fair, reasonable and adequate settlement. And we've brought this case to your Honor because, based on our experience, we believe this is a fair, reasonable and adequate settlement.

In addition, I would note that in Magistrate Judge Sullivan's report and recommendation, she referred to counsel for the end-payor plaintiffs as well versed and experienced. She said, "I find that

the work of EPP's counsel resulted in the Warner Chilcott Settlement Fund, which confers a very substantial benefit on potentially 40,000 members on the TPP class. While not directly pertinent, I also find that EPP counsel litigated persistently, aggressively and with great skill on behalf of the consumer class, but achieved only limited success, that being the Lupin settlement, based on which they are requesting no fees. I further find that EPP counsel have demonstrated that they are skillful and well-experienced and that they have effectively and efficiently prosecuted this complex and protracted litigation to the benefit of the EPP class. Their work arced over almost seven years in this court, ongoing for a total close to eight years, with EPP counsel achieving ultimate and hard-fought success in establishing the legal viability of the EPP claims in one of the first cases following *Actavis*, in overcoming the challenge of *Asacol,* in achieving certification of the TPP class, and in continuing the fight to the brink of trial, including full-blown trial preparation for a solo trial while other plaintiffs settled." That's Magistrate Judge Sullivan on the report and recommendation. So for all of reasons that I've articulated, we would respectively submit that the

notice and that the Lupin million-dollar settlement and the Warner Chilcott $62.5 million settlement should be finally approved by the Court.

Now, with regard to the plan of -- at this point, does your Honor have any questions on those settlements?

THE COURT: No, no questions.

MR. BUCHMAN: Okay. Thank you, your Honor.

With regard to the plan of allocation, we believe it is also fair, reasonable and adequate. All that is required is a rational basis for the allocation. The allocation in this case was conducted by plaintiffs' economist Dr. Gary French of Nathan Associates. It did a detailed analysis and came up with a breakdown between the consumers and the third-party payors, with the consumers being 30.03 percent and the TPPs being 69.97 percent.

Now, with regard to the Lupin settlement specifically, we determined, in connection with that settlement at the time that it was arrived at, that the expenses in the litigation were approximately $2,345,000. So applying that 33.03 percent differentiation, the expenses allocable to the consumers was $704,209, plus there was the additional cost of a robust notice publication that was necessary

to the consumers as part of the Lupin settlement, a significant portion of the $354,000 notice was directly attributable to the consumers. And, therefore, we believe that that money from the million-dollar Lupin settlement should pour over into the Warner Chilcott settlement.

With regard to attorneys' fees, reimbursement of expenses and service awards, it's worth noting that your Honor, at the beginning of this case, assigned Magistrate Judge Sullivan the task to oversee quarterly time and expense reports. She routinely reviewed our time and expense reports. She held conferences with counsel to discuss her findings with regard to those reports. And we implemented, in accordance with her direction and findings, those changes. So our time and expenses were monitored in this case from the outset.

And for that reason we believe that your Honor requested that she address our motion for attorneys' fees, costs and expenses and service awards given her intimate familiarity with the issues that were raised. She re-reviewed our time and issued a report and recommendation to your Honor that we are asking that you adopt and affirm for fees of $20,833,333.33 and litigation expenses of $3,995,995.58 plus $90,000 in incentive awards to the class-representative plaintiffs

who went through the rigors of discovery, they produced documents in connection with defendants' document requests and sat for depositions and were prepared, like the city of Providence, to attend trial and testify in this case.

With regard to notice, notice must be reasonable in manner to all class members. It should reach them in a reasonable way to inform them of the settlement and give them an opportunity to object. Again, we've received no objections in connection with this case.

With regard to notice, there were two different types of notice. There was mailed notice directly to third-party payor clients, that we're aware of. There were 40,000 of those individuals. This is laid out in the declaration of Eric Miller. There was also publication notice which consisted of various forms. There was a one-third summary of the notice in *People Magazine* in May of this year. There was a PRNEWS flyer press release that was issued. There were news feed announcements on Facebook and Instagram. And there were 157 million targeted press releases on select websites such as ThinkAdvisor and Light Health. And there were additional banner advisements on the internet.

So for these reasons, we believe, and for the

reasons articulated in Eric Miller's declaration, we believe that the class received more than adequate notice concerning the settlement in this case. For all these reasons and for the reasons articulated by Mr. Sobol, we respectfully request that the Court approve the Lupin and Warner Chilcott settlements, adopt the plan of allocation and affirm and adopt Magistrate Judge Sullivan's report and recommendation on our motion for fees, costs, expenses and service awards to the class representatives.

Two proposed orders have been presented to your Honor for review and signature, if this settlement meets with your approval. Unless the Court has any further questions, we rest on our papers.

THE COURT: No. I think you've covered everything, Mr. Buchman. Thank you.

MR. BUCHMAN: Thank you, your Honor.

THE COURT: All right. I think it was -- Mr. Pace, are you going to be speaking on behalf of Warner Chilcott?

MR. PACE: Yes, your Honor.

THE COURT: Okay.

MR. PACE: And good morning, your Honor. And very briefly, I'll join, first of all, on behalf of all the firms representing the defendants in the case and

the defendants themselves, we join in the sentiment expressed by the plaintiffs, that it really was a privilege and honor to appear before your Honor and all the court staff. And we thank the Court in particular for the extensive time it took, extensive hearings and really giving the parties an opportunity to be heard on all the various issues in this complex case.

Briefly, I think there are probably two of the Grinnell factors that a defendant might have a view on and factor 8, reasonableness of the settlement in light of the best possible recovery, worst possible damages of a defendant, or factor 9, reasonableness of the settlements in light of all the attendant risks of the litigation for all the parties. And those we feel strongly, certainly, support the class settlements here.

This case was unique in, among other reasons, really presenting at least three cases in one; patent-fraud and sham-litigation case, reverse-payment case, product-hopping case. And reverse payment alone is an area in which it seems like most of the issues are still not entirely settled and therefore create great risks for the parties. The Supreme Court, as we all know, has really pushed the issues and the analysis down to the district courts to figure it out and that,

the nature of that dynamic, really does create risks for everybody.

Each one of these three theories while, as Mr. Sobol pointed out and is evident across the papers, create really high burdens for the plaintiffs to carry at trial, they also translate, essentially, into at least three different ways the plaintiffs can win at trial and that creates a lot of risk and in this case translated to potential damages in the several billions of dollars.

So for those reasons, we think the settlements are reasonable. We support approval of both sets of class settlements. And defendants, though, take no position on the award of attorneys' fees or plan of allocation. Thank you, your Honor.

THE COURT: Okay. Thank you. Is there anyone else that we need to hear from?

MR. SOBOL: Your Honor, if I may then?

THE COURT: Sure.

MR. SOBOL: In case I did not make special mention of Magistrate Judge Sullivan, I do wish to. She also paid an enormous amount of attention to this case. She met with us on the direct purchaser side quarterly. She established a protocol here that really translates quite seamlessly, frankly, in terms of

giving the Article III judge a record upon which to make a judgment like this that otherwise might be somewhat unwieldy, that kind of thing. My colleagues wanted to make sure that I do a special callout for the magistrate judge. Thank you.

THE COURT: Okay. Thank you.

Well, I think I've heard from everyone who needs to be heard from. And I'm going to keep my comments very brief I think because I think you have really covered everything that needs to be covered in terms of what the standards are, what the findings need to be, and I really don't disagree with any of the arguments and analysis that you've presented. I, essentially, agree with it all and I adopt them. So I think I'm just going to say a few things more extemporaneously rather than extremely formally.

I think I'll start just generally, in terms of speaking about the fairness and the reasonableness and the adequacy of the settlement, to just emphasize a few points that you all have made from my perspective looking at the settlement from the standpoint of having presided over this case for, I think you've said it was seven years; sometimes it seems like it was an eternity and not seven years. It was really I think one of the most complex, maybe the most complex case, that I've

had in my career on the bench, which is, you know, not quite 20 years.

As you've outlined, its complexity was layered and informed really by decisions that were being made in the Supreme Court and the First Circuit in realtime, and you all were having to deal with, particularly *Asacol*, and we were having to deal with a shifting legal landscape that made an already very complex case even more difficult. So I don't think you can overstate the degree of complexity of the litigation and really the uncertainty of the legal landscape that we were all working in.

The degree to which you all litigated the case is -- you know, I can't imagine attorneys litigating a case more rigorously than you all did in this case. It seems like every conceivable, legitimate, substantive dispute that could have been fought over was fought over to the max. So you, both sides, I think litigated the case as vigorously as any group of attorneys could.

The level of representation of all parties in terms of the sophistication of counsel, was, in my view, of the highest levels. I can't imagine a case in which there was really a higher quality of representation across the board than this one. It was enormously challenging for us in my chambers to keep up

with the dozens and dozens of lawyers that you continued to throw at the case even as we -- particularly as we approached the eve of trial. So to the extent -- and I think it's important that the level of the litigation, the sophistication of counsel, and the sophistication of the parties that you represented, all of these things suggest the reasonableness of the settlement.

I think Mr. Buchman noted that there were a hundred depositions in the case. I'd forgotten just how many there were. Both of you mentioned the motions in limine and the substantive motions to dismiss and the *Daubert* motions. And I would say that it can't be understated how substantive those motions in limine were. So again, it speaks to the amount of effort that was put into the case running right up to trial, how vigorously you litigated the pretrial issues and how much work it was, frankly, to deal with those motions in limine. And of course, you both mentioned the market-power issue, which may go down in my own personal history as the issue I have struggled with in more ways than you can imagine internally, more than just about any other. And I think that suggests just how difficult the whole market-power issue is in this area of antitrust.

You both spoke to the amount of risk, and I think that -- I'm no expert on this, but I think that you do have the expertise to analyze the risk, and I think what you presented in your papers suggests that the settlements are reasonable in light of the risks involved on both the low side, which I think could have been the plaintiffs got nothing out of this trial, to the high side, which could have been in the billions of dollars. So I think the risk has been accurately assessed by you, your clients and your experts and by the mediators.

And that I think is another indicator of the reasonableness of the settlement is the sophistication of the mediators that you had working on this case. I've looked at the background of the mediators; you've presented information about them. I think that they're probably the leading mediators in this field in the country. And the fact that they were so involved right up to the end in helping you reach a resolution, again, suggests the reasonableness.

The fact that there are no objections to the settlement on any side is I think really important, and I think the notice has been comprehensive here. As both parties have suggested, a lot of the -- at least on the DPP side, all of the -- really, on both sides,

the parties are known, and there hasn't been any objection other than the one -- or the one opt-out was not really an objection, but then they opted back in, so I think that suggests the reasonableness of the settlement. So across the board it seems to me that the factors of Rule 23 are well met in this case.

That brings me to the plan of allocation and the attorneys' fees. The plan of allocation seems reasonable to me, supported by experts and notice is -- we've discussed, I think, is adequate.

Now, on the attorneys' fees, I'm going to adopt the report and recommendation of Judge Sullivan. And I think what she says in her report and recommendation really says all that needs to be said, in addition to the comments I've just made, about the work that all of you have done in this case. I think Mr. Sobol said that this is -- even if one were to take a market-based approach to evaluating the attorneys' fees, we'd still end up in the same place at one-third.

I don't know if that's true -- that doesn't seem unreasonable to me, it might well be true -- but I think in this case I can't imagine trying to figure out how to do a post-op market-based approach to this. But I think what's more important is that we set up a process in this case that looking back on it makes me

feel very good about approving the attorneys' fees, and that's what we have Judge Sullivan overseeing and meeting with you quarterly about the fees. And that was something that Judge Sullivan and I came up with very early on, as you know, in the case, and I know that it seemed like a burden perhaps at some points where you had to go through that process with her, but I think in the end it makes your case stronger for this fee request, and it makes our job not just easier, but I think we can feel better about approving the fee request where that work was put in during the course of the litigation.

I've had the chance to speak with Judge Sullivan about this, and she has told me that I think others have sort of looked at what was done in this case and considered it to be a model that should be replicated in other cases, even though it's kind of a pain, and so I think in the future, you know, imitation is the greatest form of flattery, so maybe if that's the case, maybe it really is sort of proving up the merit of the process that we adopted.

So I do want to publicly, as part of this proceeding, thank Judge Sullivan for the amount of time and effort that she put into this case, particularly with respect to the monitoring of the attorneys' fees,

but also in other respects. It was a great advantage for me to have her as a judicial partner in working on this case. And it's kind of a model I think for how district judges and magistrate judges can work together in these really complicated cases. So I'm really grateful to her for all the work that she did.

While you usually don't maybe see us do this sort of thing, I can't overstate to you how helpful the law clerks who worked on this case with me were to helping me get through this in the way that we did. They're on this conference, and their work on this was just exemplary. And I will tell you that it is really something when it's just three of us against I don't know how many of you there were in this case, but dozens of you. And we did feel at times that it just wasn't fair that we were battling against all of you and, as they would say, you know, you guys are just so good, we don't know when you're trying to trick us and when you're really giving it to us straight. Anyway, they did amazing work, and I'm really, really grateful to them for what they did.

So with all of that, I'm going to approve the settlements, and I'm going to adopt the report and recommendation of Judge Sullivan with respect to the attorneys' fees. I've had you submit revised orders

that will set this forth on the record, and I'm going to get those orders executed in the next couple of days. And I don't see the need for any further revisions to those orders. If you do, I'd like you to let me know that.

All right. I think that concludes what I want to say here. Is there anything else that we should take up?

MR. BUCHMAN: Your Honor, Michael Buchman. I believe there's one housekeeping matter with regard to the two individual plaintiffs. There's an entry of judgment that needs to be so ordered in regard to those settlements.

THE COURT: Okay.

MR. BUCHMAN: Thank you, your Honor.

THE COURT: Okay. We'll take care of that.

Anything else from the DPPs, Mr. Sobol?

MR. SOBOL: No, your Honor. Thank you very, very much. I hope you have a wonderful rest of the summer.

THE COURT: All right. Thank you.

And anything from defendants, Mr. Pace? Where are you?

MR. PACE: Right here, your Honor.

No, nothing else from the defendant. Thank you.

THE COURT: All right. Very good. Well, thank you all. Stay healthy, and maybe we'll see you again sometime.

(Time noted; 11:05 a.m.)

(Proceedings adjourned)

I, Lisa Schwam, RPR-RMR-CRR, do hereby certify that the foregoing transcript is a correct transcript ***of a remote video conference*** prepared to the best of my skill, knowledge and ability of the proceedings in the above-entitled matter.

/S/ Lisa Schwam

Lisa Schwam, CRR-RPR-RMR
Federal Official Court Reporter

Date
September 3, 2020